longed exposure to the hydrocyanic vapor, that no kind or amount of treatment could have restored the physiologic state. In other words, the various physiologic functions might have been irreversibly inhibited or poisoned by the cyanid. Under these conditions the use of sedatives would, in my opinion, be contraindicated. It is conceivable that the cause of death in this case was not the result of exposure to the hydrocyanic vapors, because the rule is a rapidly fatal action or a rather prompt recovery, but to some other cause.

As far as I know, most authorities deny the rapid formation of cyanhemoglobin from an action of the cyanogen (CN) directly on blood. Although a slow formation has been postulated, this is contrary to the generally accepted view that cyanhemoglobin forms only in the presence of methemoglobin. It is the rapid formation of the innocuous cyanmethemoglobin (cyanhemoglobin) which explains the benefit derived from the injection of methylene blue, which, first of all, converts oxyhemoglobin of the blood to methemoglobin.

It is true, as stated by Drs. Geiger and Gray, that a spectroscopic examination of the blood for methemoglobin would be of doubtful value, because this is not a sensitive method. But a determination of the oxygen capacity of the blood would show a reduction, a virtual proof of the presence of methemoglobin, as has been demonstrated in animals. I agree with the authors that chemical examination for cyanid in the blood and tissues is futile, even in rapidly fatal cases, owing to the swift oxidation of this ion to oxycyanate and sulfocyanate.

There is no doubt of the greater value of protective measures than of running a risk of poisoning and depending on antidotal measures for eliminating the hazards accompanying fumigation with hydrocyanic vapors. The procedures used under the supervision of the San Francisco Department of Public Health are to be commended for their success. The careful consideration of every detail in the conduct of fumigation operations, and the warnings given by this department, testify again to a keen appreciation of the scientific management of, and a deep concern about, all matters pertaining to the public welfare.

THE LAW OF INCOMPETENCY*

By R. Lee Chamberlain †
San Francisco

PERSONS of unsound mind have always received special protection under our law. This special protection is codified in California as Sections 38, 39 and 40 of the Civil Code, which provides that:

"A person entirely without understanding has no power to make a contract of any kind, but he is liable for the reasonable value of things furnished to him necessary for his support or the support of his family."[1]

On the other hand, "a conveyance or other contract of a person of unsound mind, but not entirely without understanding, made before his incapacity has been judicially determined, is subject to rescission . . ."[2] and

"After his incapacity has been judicially determined, a person of unsound mind can make no conveyance or other contract, nor delegate any power or waive any right, until his restoration to capacity. . . ."[3]

CONNOTATION OF "NON COMPOS MENTIS"

The words "insane," "incompetent," "unsound mind," are all expressed in law by the term *non compos mentis*; but this term has no exact meaning: it includes all kinds of mental unsoundness recognized by the law, and its meaning varies with the type of matter under consideration.

In a medical sense, insanity or unsoundness of mind may be anything short of a mind wholly normal and free from any defective coördination arising from any cause. With the law we are only concerned with that degree of variation from the normal as will put in operation the law's protection applicable to the particular case to be considered.[4]

There is the degree of unsoundness of mind, which has to deal with the responsibility of the individual for crime. When dealing with crime, the law is concerned with ascertaining whether the individual, at the time of the commission of the alleged crime, had sufficient mental capacity to distinguish right from wrong, as applied to the particular act in question. In a criminal trial, too, the law is concerned with the ability of the person charged to properly conduct his defense at the time of trial.

Again, in civil actions the law is concerned with different degrees of unsoundness of mind; for, as has been noted, if the person in question is entirely without understanding the contract is void, while if not entirely without understanding the contract is voidable. The principal difference between a void and a voidable contract is that in a voidable contract the consideration received must be returned or tendered.[5]

There are two principal forms of court proceedings with which you are all undoubtedly familiar, for in both expert testimony on mental competency plays an important part.

COURT PROCEDURE IN COMMITMENT TO A STATE HOSPITAL

There is the commitment to the state hospital, where the question to be determined by the court is whether the individual before the court is "so far disordered in his mind as to endanger health, person, or property . . ."[6] for, if so disordered, he should be confined in a state hospital until recovery, when he will be discharged by the medical superintendent of the hospital.

COURT PROCEDURE IN APPOINTMENT OF A GUARDIAN

The other court proceeding is the appointment of a guardian where the question to be determined by the court is whether the alleged "incompetent person" is unable unassisted to properly manage or take care of himself or his property and, by reason of such incompetency, is likely to be deceived or imposed upon by artful or designing persons.[7]

This latter proceeding is important, because it is this judicial determination of incompetency that is referred to in Section 40, Civil Code, when it says: "After his incapacity has been judicially determined, a person of unsound mind can make no conveyance or other contract, nor delegate any power or waive any right, until his restoration to capacity."

---

* Read before the Neuropsychiatry Section of the California Medical Association at the sixty-fourth annual session, Yosemite National Park, May 13 to 16, 1935.

† Deputy Attorney-General, State of California.

In other words, after this adjudication and the appointment of a guardian, it is no longer a question of the competency or incompetency at the time as to a particular contract, for the court has determined for all future contracts that the person is incompetent; therefore all contracts by the ward are void.[8]

THE INDIVIDUAL IN A STATE HOSPITAL

This is not true of the adjudication that determines that an individual is to be confined in a state hospital. The adjudication of commitment to a state hospital goes no further than to require the confinement at the hospital.[9] A person ordered confined in a state hospital is, in relation to his civil contracts, and in relation to his responsibility for crime, in the same position as any other person. That is, he may sign a deed, draw a will, enter into a contract, deposit and withdraw moneys from banks,[10] and do any of the things that we do in ordinary business life, provided, of course, that, as to the act in question, he is not *non compos mentis*.[11]

He is, likewise, responsible for acts of a criminal nature,[12] provided he knows the difference between right and wrong, as applied to the particular act. I can most forcibly bring this responsibility for criminal acts to your attention by relating to you the facts in the matter of *People* v. *Willard*.[13]

REPORT OF CASE

In 1905, in Ukiah, Sheriff Smith of Mendocino County was shot and killed by Frank Willard. Willard was born and raised in Mendocino County, and had been twice previously committed by the Superior Court in Mendocino County to the State Hospital at Mendocino, and on each occasion, after remaining there a short time, had recovered and had been discharged from the asylum, his second discharge being about two years before the shooting.

Two days prior to the homicide, Willard appeared in the city of Ukiah, and the sheriff was informed that Willard was acting in a peculiar manner. One morning, about 8:30 o'clock, he apprehended Willard and took him to the sheriff's office; leaving him there, the sheriff went to the chambers of the judge of the Superior Court, made the affidavit to the effect that Willard was insane, and that it was dangerous for him to be at large. The hearing was fixed for nine o'clock that same morning, and Willard was brought to the judge's chambers for the purpose of examination. Two physicians were summoned as medical examiners. After an examination they reported that he was insane, homicidal, and dangerous. On this report Willard was adjudged insane by the court, and ordered committed to the Mendocino State Hospital for care and treatment. As the judge was signing the order of commitment, Willard declared he was not insane and should not be sent to an asylum, and that it was an outrage, etc., and started to leave the judge's chambers. The sheriff followed for the purpose of restraining him. As Willard approached the door, he drew a pistol from his pocket, opened the door, and as he stepped into the hallway whirled and fired at the sheriff, killing him instantly. Willard then escaped and hid in the brush on the hillside about a mile and a half from the scene of the tragedy. He was apprehended, and after a short stay at the hospital he was placed on trial for murder and the jury returned a verdict of murder in the first degree, which carried with it the death sentence. The case was appealed to our Supreme Court, and on such appeal it was urged on behalf of Willard that he was irresponsibly insane at the time of the killing.

The Supreme Court of this State, in upholding the verdict and judgment of guilt, said in part:

"The fact that the appellant had been ordered committed to the Mendocino State Hospital for the insane immediately prior to the homicide did not of itself exempt him from responsibility for the killing of deceased. He might have been suffering from partial insanity, such as would justify his detention in the asylum for care and treatment, and still, as we have seen, not be insane to such an extent as to be deemed irresponsible in law for his conduct. The fact that he was committed to the asylum did not conclusively establish the fact that he was insane at all. Notwithstanding the commitment, it was a question for the jury to determine whether he was in fact insane and to what extent. They were in nowise concluded by the report of the medical examiners that appellant was insane, or by the opinion of the medical examiners as to the nature of his insanity, or by the judgment which declared him insane, and ordered him committed to the asylum. The report of the medical examiners and the judgment and order of commitment being before them, were to be regarded by the jury only as evidence bearing on the question of insanity. These were to be considered by them, but what weight or credibility, if any, they should give them was entirely a matter for their determination."

COMMENT

This same rule applied to all three of the commitments, even the one concluded a few minutes before the killing.

So we see that a commitment to a state hospital is not a judicial determination of insanity, so far as criminal acts are concerned. Neither is it a determination, so far as civil actions—that is, contracts and conveyances—are concerned.

On the other hand, the finding of incompetency or insanity in a proceeding for the appointment of a guardian is a judgment, and is notice to the world and binding on all persons who thereafter deal with the ward. After such a hearing and judgment, the law will not permit a showing in a subsequent civil matter to the effect that the person under guardianship was at the time of the transaction in question competent to understand the nature thereof; for in law the ward is incompetent and stays incompetent without a lucid moment or interval, until the signing of an order by the judge restoring such person to competency.[14]

This rule, however, does not apply to responsibility for criminal acts.

RECOVERY FROM THE ESTATE OF AN INCOMPETENT PERSON

A strict and narrow interpretation of Section 40 of the Civil Code, which is the one that declares that after the adjudication of incompetency and the appointment of a guardian no contract can be made, would prohibit recovery from the estate of the incompetent for any services or goods furnished to the ward. However, even though under guardianship a ward's estate may be charged with paying the reasonable value of necessities furnished to the ward. The guardian is charged with supplying such things to the ward,[15] and if he does so furnish what are commonly called necessaries of life, such as food, clothing and shelter and other necessary services, others furnishing or attempting to furnish them to the ward cannot be said to be furnishing necessities.

For example, a ward's estate cannot be charged for a suit of clothes furnished to him when the guardian has supplied him with the necessary clothing. As to furnishing services under the heading of necessities, I find a unique situation in which the lawyers appear to have the best of the alienists; for in one California case, the fees of an alienist for making examinations and testifying in a guardianship proceeding were not allowed against the estate of the incompetent, the court saying:

"We know of no presumption that services rendered in observation and consultation by an expert alienist to determine the mental condition of a person are either necessary or beneficial to such person." [16]

While in another case an attorney's fee was allowed, the court saying:

" . . . We are inclined to the belief that services rendered by an attorney in an attempt to restore an incompetent to capacity should be classed as necessaries of life." [17]

The matter is about a draw, however, for the doctor, out of his claim for a $1,800 fee, received $45, and the court ruled that the lawyer's services were of the reasonable value of $50. To return seriously to these two cases, it appears, in the alienist fee case, that the services were not rendered at the request of the incompetent, and the court found they were of no benefit to the incompetent, but were rendered at the request of relatives for the purpose of showing to the court that guardianship was necessary, and that guardianship proceeding were dismissed without the appointment of a guardian. The $45 fee was allowed because there was a showing that at one time the doctor did treat and prescribe for the incompetent. I feel that in a proper case where the services are rendered at either the request of the incompetent or the guardian or relatives, where it is shown that the treatment or examinations were for the benefit of the incompetent, the court is authorized to allow and order paid from the estate the reasonable value of alienist services. In the attorney's fee situation the court explains that

"circumstances may well be imagined where a guardian as well as members of the family of the incompetent turn a deaf ear to his urgent request that he be restored, and it would seem unjust to deny reasonable compensation to the attorney, who is instrumental in bringing such a situation to the attention of the court, in order that the status of the incompetent be determined."

LEGAL COMPETENCY

In addition to the special types of civil proceedings we have been discussing, the question of legal competency may arise in any civil action involving a contract. This occurs when the validity of the contract is questioned on the ground of the incompetency of one of the parties to it. When such an issue is raised the judge or jury will hear testimony tending to prove or disapprove this issue. In these various proceedings the insanity will be proved by the testimony of nonexpert, as well as by the expert witnesses appointed by the court or called by the parties; for all persons are in law considered experts on mental competency.

Paragraph 10 of Section 1870 of the California Code of Civil Procedure provides that the opinion of an intimate acquaintance may be given respecting the mental sanity of the person, the reason for the opinion being given.

The term "intimate acquaintance" is rather flexible. It is a matter of decree going to the weight of the evidence. A person very well acquainted with an individual and having an exceptional opportunity to observe his actions would undoubtedly have more weight with the judge or jury than one having a lesser acquaintanceship or lesser opportunity to observe.

When rescission is sought, it is not necessary to show that a person dealing with the alleged incompetent had knowledge of the incompetency, nor is it necessary that there be any element of fraud; all that is necessary is that the trial court find that the person in question was in fact incompetent at the time he enters into the contract to the degree necessary to make the contract in law void or voidable.[18]

The degree required by law is that the party did not have sufficient mental capacity or sufficient physical energy to transact the business in question, and did not have sufficient mental capacity to understand the nature, purpose and effect of said alleged contract. To put it in another way:

The court is concerned with the question, "Was the party mentally competent to deal with the subject before him with a full understanding of his rights?" [19]

This question is primarily for the trial court or jury, and their findings will not be disturbed on appeal if there is any rational ground for the trial court's holding.

Of course, all persons are presumed to be sane until the contrary is proved, and in civil actions one alleging insanity has the burden of proving it by a preponderance of evidence.[20]

DISTINCTION BETWEEN "TRUE CONTRACTS" AND "CONTRACTS IMPLIED BY LAW"

The distinction between the two classes of cases—*true contract* and those *implied by law*—is aptly illustrated by two cases reported in Volume III, California Appellate Reports. The first of these—*Nielsen* v. *Witter*,[21] was an action on a common count for money had and received brought by an incompetent, through his guardian, to recover $1,500 paid by him to an attorney for legal services. Prior to commencement of the action, a notice of rescission was served upon the attorney by the guardian. It was held by the court that plaintiff had no mental capacity when he executed the contracts and that he was not bound by them, and the $1,500 was ordered returned.

The second case, *Estate of Nelson*,[22] involves the same facts, and is an application for allowance of attorney's fees due for services rendered the incompetent. On the theory of contract implied in law, the court made an order fixing the sum of $1,250 as the reasonable value of the attorney's services rendered to the incompetent,[23] and ordered this amount paid by the guardian from the estate.

COMPETENCY TO MAKE A WILL

There are also will contests. A clear statement as to competency to make a will may be taken from a California case:

"It is not every symptom or indication of insanity which will render one incompetent to dispose of his property. It has been said that if one is able to understand and carry in mind the nature and situation of his property, and his relations to his relatives and those around him, with clear remembrance as to those in whom, and those things in which he has been mostly interested, and is capable of understanding the act he is doing and the relation in which he stands to the objects of his bounty, free from any delusion, the effect of disease, which might lead him to dispose of his property otherwise than he would if he knew and understood what he was doing, he has the capacity to dispose of his property." [24]

RESPONSIBILITY FOR CRIMINAL ACTS

To return to the question of responsibility for criminal acts which we know is not affected by any of the proceedings we have been discussing, permit me to give you a quotation from the case of *People* v. *Troche*: [25]

"In this State, in order that insanity may be available as a defense to a crime charged, it must appear that the defendant, when the act was committed, was so deranged and diseased mentally that he was not conscious of the wrongful nature of the act committed. If he has reasoning capacity sufficient to distinguish between right and wrong, as to the particular act he is doing, knowledge and consciousness that what he is doing is wrong and criminal and will subject him to punishment, he must be held responsible for his conduct. Although he may be laboring under partial insanity, as, for instance, suffering from some insane delusion or hallucination—still, if he understands the nature and character of his action and the consequences—if he has knowledge that it is wrong and criminal, and that if he does the act he will do wrong, such partial insanity or the existence of such delusion or hallucination is not sufficient to relieve him from responsibility for his criminal acts."

IN CONCLUSION

We often see exhibitions in criminal cases where attorneys for defendants, assisted by their alienists, attempt to bring before juries various theories of irresponsibility and shades of insanity not falling within the above limitation. These exhibitions are not to the credit of either profession, the members of which should be better informed, and if their respective professional ethics are not sufficient to keep them properly circumscribed, an enlightened court should instruct and control them. Where abuses occur all three are to blame. One cannot offend without the connivance, assistance or at least toleration of the others. It occurs to me that improvement in this type of practice could be a proper sphere of activity for the Committee on Ethics of your organization.

State Building.

REFERENCES TO LEGAL AUTHORITIES

1. Civil Code, Section 38.
2. Civil Code, Section 39.
3. Civil Code, Section 40.
4. Castro v. Geil, 110 Cal. 292; More v. Calkins, 85 Cal. 177.
5. Sharp v. Mortgage Security Corporation, 215 Cal. 287.
6. Political Code, Sections 2168 and 2171.
7. Probate Code, Section 1460.
8. Hellman Bank v. Alden, 206 Cal. 592.
9. People v. McConnell, 80 Cal. App. 789.
10. Fetterley v. Randall, 92 Cal. App. 411.
11. Guardianship of Carniglia, 139 Cal. App. 629, 34 Pac. 2nd, 752.
12. In re Buchanan, 129 Cal. 330; People v. Sloper, 198 Cal. 238.
13. People v. Willard, 150 Cal. 543.
14. O'Brien v. United Bank, 100 Cal. App. 325.
15. Probate Code, Section 1502.
16. McClenahan v. Howard, 50 Cal. App. 309, at 313.
17. Estate of Doyle, 126 C. A. 646.
18. Neale v. Sterling, 117 Cal. App. 507.
19. Union Pacific Railway Company v. Harris, 158 U. S. 326; Carr v. Sacramento C. P. Co., 35 C. A. 439.
20. Albertson v. Schmidt, 128 Cal. App. 344.
21. Nielsen v. Witter, 111 Cal. App. 742.
22. Estate of Nielson, 111 Cal. App. 744.
23. Estate of Doyle, 126 Cal. App. 646.
24. Avery v. Avery, 42 Cal. App. 100; Estate of Motz, 136 Cal. 558; Estate of Houston, 163 Cal. 166.
25. People v. Troche, 206 Cal. 35.

WHAT THE HOSPITAL MEANS TO THE PATHOLOGIST*

By ROBERT A. GLENN, M. D.
Oakland

IN these parlous times of depressed or uncertain values, it might not be amiss to pause and evaluate such perquisites as may have accrued to us as hospital clinical laboratory directors. Since it would be unseemly, if not impossible, to discuss such acquisitions of worldly wealth as money, property, automobiles, even wives and families, let us confine our considerations to one subject alone, namely, the hospital.

PLACE ACCORDED TO LABORATORY DIRECTORS

It is given to but few of us to attain the cloistered security of teaching professorship of the healing art as pertaining to laboratory diagnosis. The bulk of us are what have been described, perhaps somewhat facetiously, as "bread-and-butter" pathologists, whose chief concern is making a living for ourselves and those dependent upon us. Not for us are the haloed refulgence of the seats of the learned in ivy-clad tradition; and no doting Alma Mater enfolds us in sympathetic embrace, beaming a welcome with the nine-o'clock scholars and in indulgent love sending us forth with joyous release as the clock strikes five. Nor are we booned with three or four months each summer in which to indulge, unhindered, our pet or secret joys, be they mountain-climbing, deep-sea fishing, long-distance motoring, or even perhaps the thrill of undisturbed puttering with some laboratory *Arbeit*. For most of *us*, life begins (and mayhap ends) with the urgently insistent call of some hospital whose laboratory needs are the cross we bear.

Most of us, indeed, are associated with hospitals as directors of clinical laboratories: no need for me to enlarge on this picture. We know, all too well, the composite of boards of directors, superintendents, staff doctors, patients, tech-

* Chairman's address, Pathology and Bacteriology Section of the California Medical Association, at the sixty-fourth annual session, Yosemite National Park, May 13–16, 1935.